IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1763 (SB) OF 2002

Naresh Chandra Tyagi,
S/o late Shri Jagdish Chandra Tyagi,
R/o C/o Devi Prakash, 53/5, Araghar,
District Dehradun. .....Petitioner.

Versus

1. Director,
   Social Welfare, Uttaranchal, Dehradun.
2. Additional Director,
   Social Welfare, Uttaranchal, Dehradun.
3. Principal,
   Higher Secondary Government Ashram Type School,
   Ambari, District Dehradun. .....Respondents.

Sri Rajendra Dobhal, Advocate for the petitioner.
Learned Standing Counsel.

Dated : 02.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to consider the case of petitioner for appointment on compassionate ground in the office of respondent no. 3 under the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974.

Brief facts giving rise to the present writ petition are that the father of the petitioner, late Sri Jagdish Chandra Tyagi was working as Assistant Teacher in Higher Secondary Ashram Type School, Ambari, District Dehradun. He died in harness on 28.04.1992 leaving behind his two wives Smt. Anaro Devi and Smt. Bhawani Devi, two sons namely Naresh Chandra Tyagi, Ramesh Chandra Tyagi and one married daughter.

After the death of Sri Jagdish Chadra Tyagi, the petitioner his elder son namely Naresh Chandra Tyagi applied for employment in the office of respondent no. 3 on compassionate ground on 25.03.1996, but the respondents did not pay any heed to the representation of the petitioner.

Thereafter, the petitioner made another representation on 04.04.1996 and further on 23.04.1996 to the respondents regarding his appointment under Dying in Harness in the office of respondent no. 3 but the same has not yet been disposed of.

It has been submitted that between the petitioner Naresh Chandra Tyagi, Ramesh Chandra Tyagi and Smt. Anaro Devi a Misc. Case No. 157 of 2002 Smt. Bhawani Devi and Naresh Chandra Tyagi and others was going on regarding the succession of property of late Sri Jagdish Chandra Tyagi in the Court of Additional District Judge/IInd Fast Track Court, Dehradun. On 17.02.1997, the respondent no. 3 wrote a letter to the Addl. District Judge/IInd Fast Track Court, Dehradun, informing him that the case of petitioner for employment and other benefit on account of the death of Shri Jagdish Chandra Tyagi, can only be considered by the Court and after the decision, the authority will take appropriate decision into the matter.

However, petitioner has submitted that the Misc. Case No. 157 of 2002 Smt. Bhawani Devi and Naresh Chandra Tyagi and others was decided by the Addl. District Judge/IInd Fast Track Court, Dehradun vide its order-dated 20.04.2001 and a succession certificate was issued in favour of the petitioner on 14.06.2001. In the said certificate, it was stated that the petitioner will be entitled for employment in the office of respondent no. 3 on compassionate ground on account of death of Sri Jagdish Chandra Tyagi-father of the petitioner.

After getting the succession certificate dated 14.06.2001, the petitioner preferred a representation on 29.06.2001 to the respondents stating therein that the succession case has been decided in favour of the petitioner and, therefore, the petitioner has prayed for the appointment on compassionate ground after the death of Shri Jagdish Chadnra Tyagi-father of the petitioner.

Thereafter on 23.076.2001, the respondent no. 3 forwarded the case of petitioner to the respondent no. 1 after recommendation for appointment of the petitioner on compassionate ground in the office of respondent no. 3 on account of death of his father late Sri Jagdish Chandra Tyagi.

The petitioner has again on 10.08.2001 made a representation to the respondent no. 1 requesting him for the appointment on compassionate ground.

On 20.11.2001, again the petitioner has preferred a representation to the respondent no. 2 requesting him that he is entitled for appointment in the office of respondent no. 3 on compassionate ground as the petitioner has been successful by the competent court in the succession proceeding.

The grievance of the petitioner is that despite several representations preferred by the petitioner, the respondents have not decided the petitioner's representation and kept the case of the petitioner pending with him.

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

> *"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the*

bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered

by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased. on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, the respondents no. 2 and 3 are directed to dispose of the representation filed by the petitioner from time to time within a period of six week from the date of presentation of the certified copy of the order.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

02.03.2006
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